

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER 3431

IN THE MATTER OF:

Served November 9, 1989

Application of LEE COACHES, INC., )  
for a Certificate Authorizing )  
Charter Operations )

Case No. AP-89-21

By application filed April 24, 1989, Lee Coaches, Inc. (Lee Coaches or applicant), a Virginia corporation, seeks a certificate of public convenience and necessity to transport passengers, together with mail, express, and baggage in the same vehicle with passengers, in for-hire charter operations between points in the Metropolitan District, restricted against transportation solely within the Commonwealth of Virginia. [See Compact, Title II, Article XII, Section 1(b).]

A public hearing was held on Wednesday, July 26, 1989, pursuant to Order No. 3356, served June 16, 1989, and incorporated herein by reference. Applicant presented a company witness and three public witnesses. Gold Line, Inc. (Gold Line), and National Coach Works, Inc. (NCW), timely protested the application. Each presented evidence at the hearing.

SUMMARY OF EVIDENCE

Mr. Raymond Hendrickson testified on applicant's behalf. Mr. Hendrickson has extensive experience in transportation. He currently has the dual responsibilities of driving as well as acting as a consultant for applicant. Lee Coaches has been performing passenger transportation since 1981. It holds operating authority from the Interstate Commerce Commission (ICC), the State Corporation Commission of Virginia, and operating rights pursuant to WMATC Special Certificate of Public Convenience and Necessity No. 1. Its operations are based in Fredericksburg, VA. Applicant filed this application because it has had numerous requests to provide transportation between points in the Metropolitan District, and it hopes to increase utilization of its buses. Lee Coaches currently operates 13 vehicles. The witness testified that several of its vehicles are committed to service pursuant to a contract with the Close Up Foundation. The Commission takes official notice of its files which show that applicant's contract with Close Up has been extended through August 1, 1990, and requires applicant to commit six vehicles for service under the contract.

The remainder of applicant's fleet is used for ICC charter movements and daily commuter runs. Buses used in commuter service are idle between the hours of 8 a.m. and 3 p.m. Applicant, therefore, plans to make these buses available for mid-day charter movements. Applicant's buses range in model year from 1968 to 1981. Several of

the vehicles have undergone refurbishment and are more up to date than the model year reflects. Most of the coaches are equipped with a two-way communication system. The witness testified that a 22-passenger executive coach has been acquired by Lee Coaches. The executive coach has a public address system, wet bar, lavatory, video cassette recorder, stereo, television, and microwave. Maintenance of the vehicles is performed by the owners of Lee Coaches, both of whom are trained mechanics. A full-time mechanic is also on staff. Maintenance facilities include a two-bay garage, and a regular maintenance routine is followed. Lee Coaches employs six full-time drivers and has 20 part-time drivers available. Only experienced drivers are selected for employment. They undergo a training program that consists of video and film presentations highlighting safe and defensive driving.

Applicant's proposed tariff shows group charter rates of \$40 an hour with a six-hour minimum. This includes travel time to and from applicant's Fredericksburg facilities. Transfers to or from points in the Metropolitan District except Washington Dulles International Airport (Dulles) would be \$40 an hour with a four-hour minimum plus two hours travel time. Dulles transfers would have a four-hour minimum plus three hours travel time. The tariff further states that guide services and other services specified by the customer would be charged at cost.

Applicant's statement of financial condition dated December 31, 1988, shows \$103,858 in cash and \$184,072 in fixed assets. An adjustment to the balance sheet was made orally at hearing providing for \$57,306 in current year depreciation expense, thereby reducing its fixed assets account to \$126,766. Total liabilities are listed at \$115,867 with \$164,226 in total equity. The witness testified that applicant's equity would need to be adjusted to compensate for the decrease in total assets caused by applicant's failure to include depreciation expense in its balance sheet. An operating statement for the 12 months ended December 31, 1988, shows \$170,000 in WMATC operating income and \$515,102 in other income. Total operating expenses are listed at \$539,806, yielding net income of \$145,296. Applicant projects WMATC revenues of \$100,000 for the first 12 months of the proposed operations with \$91,700 in expenses.

Ms. Joan Battaglia testified regarding her experience in using applicant's service heretofore. Ms. Battaglia is the manager of program services for Close Up Foundation. Close Up is a nonprofit educational entity that arranges educational tour programs which are designed to aid high school students in their study of government. Close Up has used the services of Lee Coaches for the past two years. It is her judgment that applicant's service and equipment have been very satisfactory. The witness also has found applicant's drivers to be outstanding.

Mr. Mark Fisher is the director of operations for the Capital Informer. The Capital Informer is a destination management company which, inter alia, arranges transportation for large conventions requiring airport meet and greet services, local tours, special events,

and shuttle movements. The Capital Informer has experienced an increased level of growth over the last three years due to a surge in convention business and tourism in the Washington metropolitan area. It has been Mr. Fisher's observation that, while the demand for transportation is increasing, the supply of available coaches is decreasing. Mr. Fisher testified that several carriers in the area have reduced their fleets by 30 to 50 percent. The Capital Informer was one of the accounts that presented evidence in an investigation instituted by the Commission which examined the need for additional coach transportation service in the Metropolitan District. See Investigation of Need for Charter Coach Service Pursuant to the Compact, Title II, Article XII, Section 4(d)(3); Order No. 3663, served December 9, 1988. \*/

Mr. Fisher admits that he never used the services of applicant pursuant to its grant of temporary authority. On some occasions applicant was unable to supply requested vehicles. On other occasions vehicles were available and reserved, but the Capital Informer had to cancel the requests because its clients failed to follow through on commitments. One of the problems that the witness encounters in trying to secure adequate transportation is frequent requests to book transportation on short notice. To satisfy transportation requests the witness has been forced to use two 20-passenger vehicles when one 40-passenger coach was preferred. Mr. Fisher has not always been successful in filling the transportation needs of clients. The Capital Informer has lost business due to an inadequate supply of available coaches. Mr. Fisher is aware that a number of applicant's vehicles would only be available for charter services in mid-day. However, Mr. Fisher would use these vehicles for tour programs and airport transfers. A similar arrangement is currently in place with another carrier. Mr. Fisher uses the services of protestants. If protestants are unable to provide the required transportation, Mr. Fisher contacts other carriers. Gold Line is used by the Capital Informer for sightseeing tours but not for multi-day shuttle movements. This is because Gold Line will not commit vehicles for shuttle movements that require up to 12 hours of service a day for several days in a row. Mr. Fisher's goal in testifying was to secure a greater pool of available coaches in the Metropolitan District. It is Mr. Fisher's testimony that "if this authority is granted to Lee Coaches it will not cost Gold Line or NCW one penny of our monies spent with them." The witness estimated that the Capital Informer makes transportation arrangements for at least 300,000 persons a year.

Ms. Charlotte Timms also testified in support of the application. Ms. Timms is the vice-president of transportation for the Convention Store. The Convention Store provides specialized bus transportation throughout the Metropolitan District. A major component of its operations is the design of major shuttle operations for programs involving the movement of 300 to 40,000 persons. Ms. Timms also testified that the Convention Store has lost business due to the

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\*/ As a result of the investigation, Lee Coaches was awarded temporary authority effective December 12, 1988, through June 9, 1989.

unavailability of coaches. She cited a specific example of losing an entire week of business in August 1988. Ms. Timms testified that the situation is aggravated by an ongoing problem of receiving transportation requests on short notice. The Convention Store did not use applicant's services under its grant of temporary authority. However, vehicles were "held" on numerous occasions, but clients cancelled their requests. Ms. Timms would be able to use applicant's buses between 10 a.m. and 3 p.m. to provide drivers of day-long movements with a mealtime break. Ms. Timms makes ground transportation arrangements throughout the Metropolitan District for approximately 300,000 people a year. She agrees with Mr. Fisher that the demand for coach service in the Metropolitan District has been increasing while larger carriers have decreased their fleets. Ms. Timms is particularly interested in applicant's executive minibus. She receives many requests for luxury vehicle service and has had difficulty in securing the few luxury minibuses available in the area. She is aware that a limited number of coaches would be available from applicant and would use the proposed operations as supplementary service. The witness, therefore, believes that the Convention Store's use of Lee Coaches would not have a negative effect on existing carriers.

The application was protested by Gold Line and its affiliate, National Coach Works. Gold Line holds WMATC Certificate No. 14 which authorizes, inter alia, the transportation of passengers in charter operations between points in the Metropolitan District. NCW holds WMATC Certificate No. 26 which authorizes the transportation of passengers in charter operations between points in the Metropolitan District. Mr. John Oakman, president of NCW, testified in opposition to the application. NCW operates 15 coaches and expects to add three to five vehicles to its fleet by the end of the year. Seven of its coaches are used for commuter runs, with the remainder available for charter service. In addition to providing passenger transportation, NCW refurbishes motor coaches. Mr. Oakman testified that the company is operating at a loss and believes that work would be diverted from NCW to Lee Coaches if the requested authority is granted. The witness testified that NCW is willing to provide coaches for shuttle movements and stands ready to serve the needs expressed by Capital Informer and the Convention Store.

Mr. Charles L. Cummings, vice-president and general manager of Gold Line, represented the corporation in opposition to the application. Gold Line currently maintains a fleet of about 70 coaches. It also operates several 22-passenger luxury vehicles. Gold Line intends to acquire additional coaches and minibuses. Gold Line opposes the application because it has become concerned about the increased number of charter coach carriers who have applied to the Commission for operating authority. Mr. Cummings admitted that Gold Line has turned down requests for transportation because none of its equipment was available. The witnesses for both protestants were of the opinion that the re-entry of the Washington Metropolitan Area Transit Authority (Metro) to the charter market would result in sufficient equipment being available for charter service within the Metropolitan District.

Mr. Stanley Johnson, Gold Line's comptroller, testified that the company is in sound financial condition. Mr. Johnson admitted on cross-examination that in a prior proceeding before the Commission, Gold Line presented evidence of financial difficulty. See Application of Shaw Bus Service, Inc., for a Certificate of Public Convenience and Necessity, Order No. 2819, served February 4, 1986. The financial condition of Gold Line has improved over the last four years due to a reduction in Gold Line's fleet, more select clientele, and better management.

#### DISCUSSION AND CONCLUSIONS

This application is governed by Title II, Article XII, Section 4(b) of the Compact which requires that an applicant prove it is fit, willing, and able to perform the proposed transportation properly and to conform to the provisions of the Compact and the Commission's rules, regulations, and requirements thereunder. Section 4(b) further requires that applicant must prove that the proposed service is required by the public convenience and necessity. Based on a review of the entire record in this case, we find that applicant has sustained the burden of proof imposed by the Compact.

Lee Coaches is an experienced passenger carrier. In addition to its ICC and intra-Virginia operations, it operates pursuant to WMATC Special Certificate of Convenience Public and Necessity No. 1. Applicant's financial data show that operating revenues increased significantly in 1988 over those reported in 1987. This increase was due in part to its WMATC operations. Authorization of the proposed charter service would allow applicant the opportunity for additional vehicle utilization and a correspondingly improved financial situation. Applicant testified that it will continue to comply with the Compact, rules, and regulations of the Commission, and the United States Department of Transportation safety regulations.

Applicant produced one witness who testified concerning applicant's operating capabilities and two public support witnesses. The testimony of the two supporting witnesses shows that Lee Coaches' proposed operations would meet an expressed need thereby serving a useful public purpose. The witnesses cumulatively testified to a responsibility for arranging charter coach transportation for thousands of passengers between points throughout the Metropolitan District, including transportation to various tourist attractions, airport transfers, and day-long shuttle movements. The witnesses believe that the proposed service is required to meet their existing and projected needs. They also testified that a decrease in available charter coaches has made their task of securing adequate transportation for clients more difficult. The witnesses have lost business due to the lack of available coaches.

Protestants contend that existing service is adequate to meet the needs of the public. The testimony of the supporting public witnesses, however, clearly indicates that existing operations do not completely meet the expressed needs for service. In addition, the

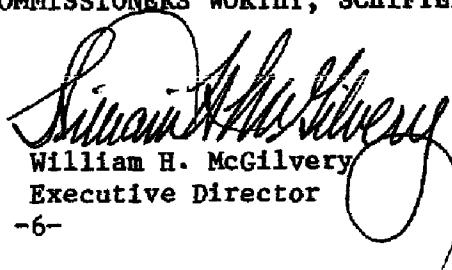
witnesses testified that they intend to continue use of Gold Line's and NCW's services when vehicles are available. The witnesses emphasized their need for additional service.

Applying the three-part test set forth in In Re Pan-American Bus Lines Operation (1 M.C.C. 190, 203 [1936]), we conclude that the benefits which will accrue to the public from the authorization of the proposed charter service outweigh any possible detriment to existing authorized carriers, and that the proposed charter service is required by the public convenience and necessity. However, inasmuch as there is no evidence showing any need for the transportation of mail and express, that portion of the application must be denied.

THEREFORE, IT IS ORDERED:

1. That Lee Coaches, Inc., is hereby conditionally granted, contingent upon timely compliance with the terms of this order, authority to transport passengers, together with baggage in the same vehicle with passengers, in charter operations between points in the Metropolitan District, restricted against transportation solely within the Commonwealth of Virginia.
2. That the application, except to the extent granted, is denied.
3. That Lee Coaches, Inc., is hereby directed to file with the Commission within 30 days of the service date of this order (a) two copies of its WMATC Tariff No. 4; (b) an equipment list specifying make, year, model, serial number, seating capacity, and license plate number and jurisdiction for each vehicle to be used in revenue operations; (c) evidence of ownership or a lease in conformance with Regulation No. 69 for each vehicle to be used in revenue operations; (d) a certificate of insurance in accordance with Regulation No. 62 covering all vehicles to be used in revenue operations; and (e) an affidavit of identification of vehicles pursuant to Regulation No. 67, for which purpose WMATC No. 137 is hereby assigned.
4. That unless Lee Coaches, Inc., complies with the requirements of the preceding paragraph within 30 days of the service date of this order, or such additional time as the Commission may direct or allow, the grant of authority herein shall be void, and the application shall stand denied in its entirety effective upon the expiration of the said compliance time.
5. That upon compliance with the conditions set forth in the preceding paragraphs, a certificate of public convenience and necessity will be issued to Lee Coaches, Inc., in the form and as worded in the Appendix to this order.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS WORTHY, SCHIFTER, AND SHANNON:

  
William H. McGilvery  
Executive Director

NO. 137

LEE COACHES, INC.

By Order No. 3431 of the Washington Metropolitan Area Transit Commission issued November 9, 1989;

AFTER DUE INVESTIGATION, it appearing that the above-named carrier is entitled to receive authority from this Commission to engage in the transportation of passengers within the Washington Metropolitan Area Transit District as a carrier, for the reasons and subject to the limitations set forth in Order No. 3431;

THEREFORE, IT IS ORDERED that the said carrier is hereby granted this certificate of public convenience and necessity as evidence of the authority of the holder thereof to engage in transportation as a carrier by motor vehicle; subject, however, to such terms, conditions, and limitations as are now, or may hereafter be, attached to the exercise of the privilege herein granted to the said carrier.

IT IS FURTHER ORDERED that the transportation service to be performed by the said carrier shall be as specified below:

IRREGULAR ROUTES:

CHARTER OPERATIONS, transporting passengers, together with baggage in the same vehicle with passengers, between points in the Metropolitan District;

RESTRICTED against transportation solely within the Commonwealth of Virginia.

AND IT IS FURTHER ORDERED and made a condition of this certificate that the holder thereof shall render reasonable, continuous, and adequate service to the public in pursuance of the authority granted herein, and that failure to do so shall constitute sufficient grounds for suspension, change, or revocation of the certificate.